



POLICE DEPARTMENT

September 4, 2019

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2018-18843
Lieutenant Farid Aliyev	:	
Tax Registry No. 934381	:	
Transit District #30	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Hamilton Lee, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Lieutenant (Sergeant at the time of the incident) Farid Aliyev, on or about October 2, 2017, at approximately 1730, while assigned to TB DT02 and on duty, in the vicinity of MTA Subway-Canal Street [J Train], New York County, abused his authority as a member of the New York City Police Department, in that he frisked Jonathan Torres without sufficient legal authority.

PG 212-11, page 5, paragraph 18 INVESTIGATIVE ENCOUNTERS

2. Lieutenant (Sergeant at the time of the incident) Farid Aliyev, on or about October 2, 2017, at approximately 1730, while assigned to TB DT02 and on duty, in the vicinity of MTA Subway-Canal Street [J Train], New York County, abused his authority as a member of the New York City Police Department, in that he interfered with Jonathan Torres's use of a recording device without sufficient legal authority.

PG 203-10, page 1, paragraph 5 PUBLIC CONTACT - PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 27, 2019.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Civilian Complaint Review Board called Jonathan Torres as its witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Not Guilty of both specifications.

ANALYSIS

In this case it is undisputed that on October 2, 2017, at approximately 1730, Respondent was assigned to TB DT02 and was on duty in the vicinity of the MTA Subway-Canal Street (J Train) in New York County. Jonathan Torres and his wife were visiting New York from [REDACTED]. At about 5:30 as they entered the subway station, Mr. Torres's wife used her MetroCard and

entered the station. Mr. Torres did not have sufficient fare on his Metrocard and entered the subway through the emergency gate without paying. Respondent approached Mr. Torres. Mr. Torres filmed part of the encounter. The issues in the case are whether Respondent frisked Mr. Torres and whether Respondent interfered with Mr. Torres's use of the phone.

Mr. Torres testified that on October 2, 2017, he was visiting friends in New York with his wife. It was their last day in New York before they were to return to [REDACTED]. At around 5:30 they both went downstairs to the subway station near Chinatown to catch the J train back to Brooklyn where they were staying. He and his wife were sharing one Metrocard. His wife swiped the card, paid the fare, and entered the subway station. When Mr. Torres went to swipe the card there were insufficient funds remaining. He was short by about 25 cents. Mr. Torres testified that he looked around downstairs to see if he could find an agent so he could refill the card or add money from another old card he had. He didn't see anyone so he went back upstairs to the street level to see if there was a MetroCard station there, but again did not find any. He went back downstairs to see where his wife was. Mr. Torres testified he saw dozens of people just walking through the emergency gate and it was open. He went through the gate into the subway. He thought that maybe he could find someone inside the station. While he and his wife were going down the stairs to the platform area, he saw "a group of guys... wearing causal clothes, light jeans, tattoos." The men asked him where he was going. He just ignored them and kept walking because he had no idea who the men were. (Tr. 9-12) He had seen the men before he went through the gate. "just loitering," and he did not know they were policemen. Mr. Torres said to the men he was going home and tried to keep walking but they surrounded him and his wife, who was six months pregnant at the time. Then one of the men asked to see his ID. (Tr. 13-14) Mr. Torres testified that he thought it was a total stranger asking for his ID and he was afraid to take his wallet out so he said, "No." Mr. Torres asked them who they were and one of the men

told him he didn't need to know anything and that they just needed to see his ID. (Tr. 15-16) Mr. Torres said he wanted to talk to a policeman and needed to call 911. At that point one of the men said he was the police and lifted his shirt to show Mr. Torres his Glock. Mr. Torres testified that they still hadn't shown him any badge or ID. Mr. Torres did produce his ID for the men after he saw the gun. After taking his ID, the men told him they wanted to see if they could give him a summons and to check if he had any warrants. The man who checked for warrants had a badge on his backpack. After that a different officer "flashed an ID" and put it right back in his pocket. Mr. Torres told the officers his card wasn't working and that he had walked through the exit gate. As soon as the one officer said that Mr. Torres didn't have any warrants, Mr. Torres took out his phone and began recording on it. (Tr. 17-19) Mr. Torres testified that he was afraid and was "trying to stick up for" his wife and himself but he wasn't raising his voice or using profanity. Mr. Torres didn't see Respondent for a while and then Respondent came from behind him and grabbed his right arm and tried to take the phone. Respondent pushed the power button and shut the phone off. Mr. Torres pulled his phone back and Respondent said that if he took the phone out again he would take Mr. Torres to jail. Mr. Torres stopped recording. Mr. Torres does not remember Respondent making any physical contact with him. (Tr. 21-22) Mr. Torres does remember that he put his hands in his pockets about two or three times and one officer did ask him to take his hands out of his pockets. (Tr. 26-27)

On cross-examination, Mr. Torres stated that there were people "streaming" in and out of the emergency gate and he denied that his wife opened the gate for him. After watching Respondent's Exhibit 1 – a surveillance video – Mr. Torres acknowledged that it was very clear on the video that his wife let him in the emergency exit. (Tr. 34-36)

Respondent testified that he has been with the Department for 15 years. (Tr. 56) On October 2, 2017, Respondent was on duty at approximately 4:30 pm in the vicinity of the back entrance to the Canal Street Station for the J line. At this entrance there is a turnstile and two emergency gates. There is no booth, but there is a MetroCard machine located there. Along with two other officers, on this date, Respondent had stopped numerous people entering the subway and issued summons. They had also arrested one individual. Respondent observed Mr. and Mrs. Torres attempting to enter the station with MetroCards. Mrs. Torres swiped herself in. Sometime after that, Respondent saw Mr. Torres go through the emergency gate. Respondent testified that he pulled his shield out of his pocket and displayed it to Mr. Torres. Mr. Torres kept walking. Respondent motioned towards the door and asked Mr. Torres if he walked through the gate. He also asked to see Mr. Torres's identification. (Tr. 60-62, 78) Mr. Torres did not provide his identification but instead pulled out his cellphone and held it at chest level and was seemingly recording with it. Respondent requested Mr. Torres's identification a few more times. Mr. Torres kept asking why he was being stopped. Mr. Torres also told Respondent he knew they were cops because he saw they had another individual under arrest. Respondent testified that he has been making these same kind of stops for five years and it is second nature for him to first display his shield, then to state the reason for the stop, and finally to ask for identification. (Tr. 63, 77) Mr. Torres kept asking the same questions about being stopped and also was putting his hands inside his pockets. He was told to stop doing that but Mr. Torres kept putting his hand back into his pocket about five or six times and was very fidgety. Respondent again showed Mr. Torres his ID and showed him it said he was a Sergeant with the NYPD. Respondent estimated he asked Mr. Torres for his ID about five to eight times. Respondent was concerned Mr. Torres could have a weapon because of the way he kept putting his hands in his pockets. (Tr. 63-66)

Mr. Torres finally produced his ID and Police Officer Masonet ran his name. While that was happening, Respondent took an arrestee upstairs to place him in a police car. When Respondent returned to the area where Mr. Torres was, it was clear to Respondent that Mr. Torres was still recording with his cell phone. Respondent testified that at no point prior to his leaving and coming back did he try to take the cell phone from Mr. Torres. Respondent further testified that police get recorded all the time since people started owning smartphones and it is not a problem for anyone to record them. (Tr. 66-68) While Mr. Torres was recording with his cell phone he suddenly put his hand in his rear back pocket. Respondent couldn't see the pocket from where he was standing but Respondent grabbed Mr. Torres's elbow with his right hand and Respondent put his right hand on top of Mr. Torres's right hand while it was in Mr. Torres' pocket. Mr. Torres then slipped the phone back into his pocket. Respondent testified he wanted to remove Mr. Torres's hand from his rear pocket because it was a safety issue and that he never grabbed Mr. Torres's phone nor did he ever tell him to stop recording. Respondent stated that if he had wanted to take Mr. Torres's cell phone from him he could have easily done it, but that did not happen. Respondent also denied frisking Mr. Torres. He testified that he only touched the outside of Mr. Torres's pants pocket when he grabbed his hand. Respondent told Officer Gray to take Mr. Torres to the side of the station and to issue him a summons. Respondent remained with Mr. Torres's wife and had a "very pleasant" conversation with her. They spoke about [REDACTED] and having kids. She was never crying. (Tr. 68-71, 79-80, 82-83)

On cross-examination, Respondent acknowledged that at 1:44 on the video of the station. (CCRB Ex. 1), he can hear Mr. Torres say something about his cellphone. (Tr. 81)

Respondent is charged in Specification 1 with unlawfully frisking Mr. Torres. First of all, Mr. Torres in his narrative of events, does not mention being frisked or patted down in any

way. In fact, Mr. Torres testified that while the Respondent grabbed his phone, Respondent never made any physical contact with him. (Tr. 22) Respondent testified that he never frisked Mr. Torres and in fact only made incidental contact with Mr. Torres's rear pants pocket when he went to pull his arm to prevent Mr. Torres from putting his hand into his pocket. I find Respondent's testimony to be credible. He testified in a calm manner on both direct and cross-examination. In addition, his testimony was supported by the portions of the video where his actions were able to be observed. For example, he described showing his shield to Mr. Torres at the initiation of the stop and Respondent can be seen in CCRB 1 - 2nd file - at 4 to 5 seconds, taking something out of his pocket and gesturing with it towards Mr. Torres. He also can be seen in the 5th file on the exhibit as having what appears to be a somewhat lengthy calm conversation with Mrs. Torres. Based on Respondent's credible testimony, I find him Not Guilty of Specification 1.

Specification 2 charges Respondent with interfering with Mr. Torres's use of a recording device without sufficient legal authority. Again I credit Respondent's testimony that he did not grab or try to grab Mr. Torres's phone away from him. First of all, Respondent does not seem to be bothered with the fact that Mr. Torres apparently was recording him during the initial part of their encounter which is visible on the videos. While Mr. Torres denies he was filming during this segment of the encounter, it appears to the court that he was more likely than not filming. Mr. Torres can be seen with what appears to be a phone aimed in a position to record in the 5th file on the video exhibit at approximately 5:30. Mr. Torres's testimony that it was not a phone in his hands, but rather that he was looking at his watch is not credible. There is clearly an object in Mr. Torres's hands and it resembles a phone, not a watch. Respondent remains completely calm in his demeanor at this point in the video. It is also important to note that Respondent would have little reason to stop someone from video recording an encounter in the subway as

Respondent would have known after conducting these stops for years that there were numerous cameras recording the area around the turnstiles. I also find that Mr. Torres's description of how Respondent went to grab for his phone is not supported by the video. While the portion of the event where Respondent grabs Mr. Torres's arm is not visible on the video, Mr. Torres described a person coming from around him, who he wasn't paying attention to, as then grabbing his phone. In the 5th file at approximately 2:04 while Mr. Torres is facing towards the turnstiles, Respondent does not come around Mr. Torres but rather walks in front of the turnstiles and then resumes standing right next to Mr. Torres.

I reject the CCRB argument that Mr. Torres's statement at the end of the first file which sounds like he says something about his phone is proof that Respondent tried to grab the phone. Mr. Torre's statement about his phone could be equally consistent with Respondent's description of the phone going back into Mr. Torre's pocket or even becoming shut off when it went into the pocket after Respondent grabbed Mr. Torres's arm.

Based on the above, I find Respondent Not Guilty of Specification 2.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

NOV 20 2019



JAMES P. O'NEILL
POLICE COMMISSIONER